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VENTURA RIVER WATER DISTRICT and
10 MEINERS OAKS WATER DISTRICT

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

14 SANTA BARBARA CHANNELKEEPER,
a California non-profit corporation,

15
16 Petitioner,

17 vs.

18 STATE WATER RESOURCES CONTROL
BOARD, a California State Agency; CITY OF
19 SAN BUENAVENTURA, a California
municipal corporation,

20 Respondents.

21
22 CITY OF SAN BUENAVENTURA, a
California municipal corporation,

23 Cross-Complainant

24 vs.

25 DUNCAN ABBOTT, an individual, et al.

26 Cross-Defendants.
27
28

Case No.: 19STCP01176

CROSS-DEFENDANTS' VENTURA
RIVER WATER DISTRICT AND MEINERS
OAKS WATER DISTRICT JOINDER IN
CITY OF SAN BUENAVENTURA'S
PHASE ONE TRIAL BRIEF

Dept: 10

Action Filed: Sept. 19, 2014

Trial Date: Feb. 14, 2022

1 Cross-Defendants Meiners Oaks Water District and Ventura River Water District (**Districts**)
2 hereby join in the City of San Buenaventura's (**Ventura**) Phase One Trial Brief filed in this
3 action, and further provide the following for the Court's consideration.

4 **TRIAL ISSUES**

5 As originally contemplated, five issues were identified to be addressed and resolved in the Phase
6 I Trial:

- 7 1. What are the boundaries of the Ventura River Watershed?
- 8 2. What are the boundaries of the four Groundwater Basins in the Ventura River
9 Watershed?
- 10 3. Is there an interconnection between the surface water and groundwater in the Ventura
11 River Watershed, including the interconnection between surface water and the four
12 groundwater basins, and the interconnection between those groundwater basins and
13 the Ventura River and its tributaries?
- 14 4. Whether the court may comprehensively adjudicate the four Ventura River Watershed
15 groundwater basins and interconnected surface waters in one legal proceeding.
- 16 5. Whether the court is required to make a finding under code of civil procedure section
17 833(c) and if so, whether the evidence supports a finding that "including an
18 interconnected surface water body or subterranean stream flowing through known and
19 definite channels is necessary for the fair and effective determination of the
20 groundwater rights in a basin.

21 Issues 1 and 2 were resolved by the Court on December 9 and 13, 2021 [December 27,
22 2021 Notice of Ruling, File & Serve Xpress Transaction No. 67195640]. Issue 4 was resolved
23 by the Court's January 20, 2022 ruling. Therefore, only items 3 and 5 remain to be determined
24 by the Court in the Phase I Trial. Because Ventura has requested that the court make the finding
25 described in Item 5, the issue for the Phase I trial now solely focuses on Item 3. The only
26 challenge to the common assumption that there is an interconnection between the surface water
27 and groundwater in the Ventura River Watershed (**Watershed**) come from parties in the Ojai and
28 Upper Ojai basins.

1 **INTERCONNECTION**

2 When reviewing the reports and testimony from the numerous experts in this matter, it is
3 important to focus on the sole issue in the Phase One trial:

4 **Is there an interconnection** between the surface water and groundwater in the Ventura
5 River Watershed, including the interconnection between surface water and the four
6 groundwater basins, and the interconnection between those groundwater basins and the
7 Ventura River and its tributaries?

8 This is not a determination of the extent or frequency of the interconnection, it is a determination
9 of whether or not there is an interconnection. Issues of extent or frequency of interconnection
10 may be relevant to, and can be addressed in, future phases of the trial; Phase One, however,
11 focuses on the mere existence of interconnection. There appears, however, to be a substantial
12 disconnect between the Districts, Ventura and the State of California parties on the one hand,
13 and the City of Ojai, Upper Ojai Group and Eastern Ojai Group (collectively, “**Ojai Parties**”)
14 regarding the scope and focus of the Phase One trial.

15 Representatives of the Ojai Parties have consistently attempted to refocus and confuse the
16 topic of the Phase One trial – recently asserting that Ventura must demonstrate “sufficient” or
17 “material” connectedness between the Ojai and Upper Ojai Basins, and reaches 3 and 4 of the
18 Ventura River in the summer months. Specifically, they cite to the appellate decision in this case,
19 wherein the Court concluded that “the transaction must be defined to include any diversion and
20 pumping of water that leads to allegedly insufficient flow in reaches 3 and 4 of the [Ventura]
21 river in summer months. This ‘transaction’ is the wrongdoing of which Channelkeeper
22 complains, generalized to include all entities potentially responsible for it.” (*Santa Barbara*
23 *Channelkeeper* (2018) 19 Cal.App.5th 1176, 1189). The Ojai Parties read this Court’s February 8,
24 2022 Order as specifically referencing these requirements and imposing such a burden on the
25 parties in Phase One. (2/8/22 Order, p. 3). Moreover, they argue that in its February 14, 22
26 Order, this Court similarly noted that the burden is more than mere interconnectivity, but rather,
27 noted that the burden is “material interconnectedness.” (2/14/22 Order, ¶14).

28 The Ojai Parties are bootstrapping what may be issues to be addressed in later phases of
29 this trial, and appear to be fundamentally misunderstand how the Court of Appeal decision

1 relates to Phase One. The only issue to be tried in Phase One is actually the threshold factual
2 issue that the Court of Appeal decision assumed to be true for purposes of its analysis of whether
3 Ventura could file its Cross-Complaint. Phase One will now address the factual issue of
4 interconnection that the Court of Appeal took for granted based on the procedural posture of that
5 case. The Court of Appeal did not (and could not) speak at all to the burden of proof on the issue
6 of interconnection, as it assumed interconnection to exist. Rather, it analyzed as a matter of law
7 whether the Cross-Complaint arose out of the same transaction or occurrence or involved the
8 same property right that was alleged in the underlying Complaint per Code of Civil Procedure
9 section 428.10(b). Assuming interconnection to exist based on the allegations in the Cross-
10 Complaint and the underlying Complaint, the Court of Appeal found that the City's Cross-
11 Complaint satisfied both prongs of Section 428.10(b) (transaction/occurrence and property), and
12 therefore held that the trial court erred in striking the Cross-Complaint. (See, e.g., *Santa*
13 *Barbara Channelkeeper v. City of San Buenaventura* (2018) 19 Cal.App.5th 1176, 1193
14 ["Because the water sources on which all users draw *are alleged to be hydrologically connected*,
15 the water that the Cross-Defendants are using and which is the subject of the City's Cross-
16 Complaint is the same water that the City is using, which is the subject of the Complaint."]
17 (emphasis added).]) Phase One now tests the factual basis for what the Court of Appeal assumed
18 to be true—nothing more.

19 Further, the arguments of the Ojai Parties are not consistent with the cross-complaint that
20 is actually pending before the Court. Ventura's cross-complaint pleads a comprehensive
21 adjudication – it is not limited to reaches 3 and 4 of the Ventura River, and it is not limited to the
22 summer, or times when fish are present in the river. Finally, the Court of Appeal said that it
23 "express[ed] no view on the merits of the pending Complaint or the proposed Cross-Complaint,
24 [and] we hold that the City was entitled to bring in other water users, and its Cross-Complaint
25 should have been allowed to stand." (19 Cal.App.5th at p. 1193.)

26 Alas, much of this confusion and procedural posturing becomes irrelevant when the court
27 is able to view the evidence in the Phase One trial. While the experts for the City of Ojai and the
28 Upper Ojai Group (Mr. Jordan Kear) and the East Ojai Group (Mr. Anthony Brown) attempt to

1 diminish the *extent* of interconnection by focusing on a clay layer between an upper and lower
2 aquifer in these basins, the issues of the extent of interconnection is irrelevant to this phase of the
3 trial¹. Rather, it is essential to focus on those portion of the Kear and Brown expert reports and
4 testimony that acknowledge and demonstrate the *fact of* interconnection rather than the *extent of*
5 interconnection. This is important, because when reviewing the expert reports submitted by all
6 parties, every expert expressly acknowledges that the surface water and groundwater in the
7 Ventura River Watershed, even in the Upper Ojai and Ojai Basins, are materially interconnected.

8 EVIDENCE

9 Ventura's Opening Brief describes common usage and regulatory definitions of
10 interconnection. However, it is important to also consider interconnectedness in a practical sense:
11 groundwater is hydrologically connected to surface water if it will influence the rate at which the
12 surface water flows. Connectivity turns on the influence that groundwater has on surface water;
13 connectivity can also mean a linkage between groundwater and surface water such that
14 augmenting or depleting groundwater impacts the availability or flow of surface water.

15 1. Testimony of Dr. Clare Archer.

16 Dr. Archer has expressed the opinion, supported by modeling of the Ventura River Watershed
17 and its groundwater basins, that:

18 The four groundwater basins within the Ventura River Watershed (Watershed) are
19 hydrologically connected to the Ventura River in a substantial and material way, and
20 within each groundwater basin surface water and groundwater are also hydrologically
21 connected in a substantial and material way. Within each basin, and within the watershed
22 as a whole, extractions from either groundwater or surface water materially diminish and
23 could adversely impact the uses of the other such that the water within the Watershed
24 constitutes one common water supply.

25 Archer report at p. 5.

26 2. Testimony of Dr. Al Preston and Dr. Gregory Schnaar.

27 Doctors Preston and Schnaar conclude, based upon groundwater and surface water
28 models and other information, that:

¹ No party disputes that evidence of interconnection must be material, as defined by Black's Law Dictionary: "Important; more or less necessary; having influence or effect . . ."

- Surface water and groundwater are connected in the Ventura River watershed
- Most groundwater pumping causes streamflow depletion in the Ventura River Watershed, and
- Groundwater pumping in areas distant from the Ventura River and its tributaries impacts streamflow.

Preston/Schnaar Expert report at p. 6.

While the Ojai Parties will object to the testimony of Doctors Archer, Preston, and Schnaar, even without their testimony, interconnection is established.

3. Testimony of Mr. Jordan Kear.

Mr. Kear has expressed the opinion that “surface flow observed in San Antonio Creek emerges from groundwater stored in the perched aquifer system. . . .” Kear Expert Report at p. 2. Further, explaining “the fate and transport of water in the Ojai basin,” Mr. Kear observes that “when rain falls in the headwaters, what doesn’t evaporate or transpire by plants either runs off as surface flow or infiltrates into the groundwater system. The runoff will work its way over bedrock into the stream channels where it either continues running off as surface flow and may partially escape the watershed during high rainfall and floods”. Id at p. 6. Finally, in his deposition, Mr. Kear acknowledged that if pumping from the so-called lower “production aquifer” were eliminated, water from that aquifer would flow down San Antonio Creek and then out of the Ojai Basin.

4. Testimony of Mr. Anthony Brown. Mr. Brown has expressed the opinion that “there is a hydrologic connection between perched groundwater in the southwestern portion of the Ojai Basin and flows in San Antonio Creek.” Brown Expert Report at p. 2. Further, Mr. Brown acknowledges that increased groundwater pumping from the Ojai Basin “leads to less groundwater in storage, potential long-term declines in groundwater elevations, and decreased perched groundwater discharge to surface water”. Id at p. 59. Conversely, Mr. Brown also acknowledged under deposition questioning that if groundwater pumping from the deeper aquifer ceased, groundwater levels would rise to the point at which the seeps in the river essentially would “continue for a period until such time as the groundwater levels declined again

1 and no longer with those seeps.” In addition, speaking about the deeper aquifer, Mr. Brown
2 states:

3 . . . in a very wet winter, as we saw in 2017, the groundwater level of the big bucket rises
4 to the point at which it hits that point where the base of the aquitard exists and allows to
5 drain in some water to create those little springs and seeps at the 900 foot level that enter
6 San Antonio Creek.

7 **CONCLUSION**

8 Because the evidence provided to the court from each and every expert in Phase One
9 demonstrates that the entire Ventura Watershed - as defined by the court - functions as a
10 singular, interdependent, hydrogeologic unit, and because the extraction of groundwater from
11 any area within the boundary of the Watershed will impact the Watershed, the Court has ample
12 evidence to, and should:

- 13 (1) find that there is an interconnection between the surface water and groundwater in the
14 Ventura River Watershed, including an interconnection between surface water and
15 the four groundwater basins, and an interconnection between those groundwater
16 basins and the Ventura River and its tributaries, and
17 (2) should decline to exclude any area within the Watershed from the adjudication
18 process.

19 Dated: March 2, 2022

HERUM CRABTREE SUNTAG
a California Professional Corporation



21 By: JEANNE M. ZOLEZZI
22 Attorneys for Cross-Defendants
23 VENTURA RIVER WATER DISTRICT
24 and MEINERS OAKS WATER DISTRICT

1 *Santa Barbara Channelkeeper v. State Water Resources Control Board, et al.*
2 Los Angeles County Superior Court – Case No. Case No 19STCP01176

3 **PROOF OF SERVICE**

4 I, PEGGY GARCIA, certify and declare as follows:

5 I am over the age of 18 years and not a party to this action. My business address is:
6 HERUM\CRABTREE\SUNTAG, 5757 Pacific Avenue, Suite 222, Stockton, California 95207.
7 On the date set forth below, I served the following document(s):

8 **CROSS-DEFENDANTS' VENTURA RIVER WATER DISTRICT AND MEINERS
9 OAKS WATER DISTRICT JOINDER IN CITY OF SAN BUENAVENTURA'S PHASE
10 ONE TRIAL BRIEF**

11 **[X] BY ELECTRONIC TRANSMISSION:** Pursuant to Court Order Authorizing Electronic
12 Service, I provided the document(s) listed above electronically on the **File &**
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14 **[] BY U.S. MAIL –** By enclosing the document(s) in a sealed envelope addressed to the
15 person(s) set forth below, and placing the envelope for collection and mailing, following
16 our ordinary business practices. I am readily familiar with this business's practice for
17 collecting and processing of correspondence for mailing. On the same day that
18 correspondence is placed for collection and mailing, it is deposited in the ordinary course
19 of business with the United States Postal Service, in a sealed envelope with postage fully
20 prepaid.

21 The envelope was addressed as follows:

22 **[] BY FEDERAL EXPRESS/OVERNIGHT MAIL** in a sealed envelope, with postage
23 thereon fully prepaid. [Code Civ. Proc., §§ 1013(c), 2015.5.]

24 The envelope was addressed as follows:

25 **[] BY PERSONAL SERVICE/HAND DELIVERY.**

26 I certify and declare under penalty of perjury under the laws of the State of California that
27 the foregoing is true and correct.

28 Dated: March 2, 2022



PEGGY GARCIA